



USET

SOVEREIGNTY PROTECTION FUND

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USET SPF Resolution No. 2018 SPF:012

OPPOSITION TO MEDICAID WORK REQUIREMENTS AND OTHER BARRIERS TO AMERICAN INDIAN AND ALASKA NATIVE HEALTH CARE ACCESS

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of twenty-seven (27) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** the United States government has a unique trust responsibility to provide healthcare to American Indians and Alaska Natives (AI/ANs), which has been founded in treaties and other historical relations with Tribal Nations, and sustained in law and policy; and
- WHEREAS,** this trust obligation is reflected in the Tribal Consultation Policy for the Centers for Medicare and Medicaid Services (CMS), adopted in December 2015; and
- WHEREAS,** the Social Security Act was amended in 1976 by Congress to authorize Medicare and Medicaid reimbursement for services provided in Indian Health Service (IHS) and Tribally-operated healthcare facilities; and
- WHEREAS,** Medicaid has become a critical source of funding and reimbursement for the chronically underfunded Indian Health System, representing 67% of third party revenue at IHS, and 13% of overall IHS spending; and
- WHEREAS,** changes to Medicaid must move forward in a manner that respects Tribal sovereignty and upholds federal treaty and trust responsibilities; and
- WHEREAS,** since Medicaid is jointly managed and administered by the federal government and states, state Medicaid programs play a critical role in ensuring the federal government meets its trust responsibility; and
- WHEREAS,** Section 1115 of the Social Security Act provides the Secretary of Health and Human Services (HHS) the authority to approve demonstration projects that give states additional flexibility to develop their Medicaid programs; and
- WHEREAS,** under existing regulations, 42 CFR 431.408(b), states are required to consult with Tribal Nations prior to submitting any waiver request, including Section 1115 demonstration waivers; and
- WHEREAS,** in a significant shift in policy from previous administrations, CMS provided guidance (without Tribal Consultation), through a January 11, 2018 State Medicaid Director letter, to states on developing proposals for work requirements for certain Medicaid beneficiaries within their Medicaid programs; and

- WHEREAS,** the aforementioned guidance has the potential to significantly impact Tribal Health programs including AI/AN access to Medicaid, thereby triggering a significant event that should have required Tribal Consultation prior to guidance being released to State Medicaid Directors; and
- WHEREAS,** certain states in the USET SPF region, including the state of Maine, have proposed work requirements within their 1115 Demonstration Waivers without consulting with Tribal Nations prior to advancing 1115 Waiver proposals to CMS; and
- WHEREAS,** Tribal Nations located in states that have proposed work requirements formally requested that CMS require states to exempt AI/ANs from work requirements as these requirements, and other barriers to healthcare access, as counter to the execution of the federal trust responsibility; and
- WHEREAS,** on January 17, 2018, CMS issued a “Dear Tribal Leader” letter stating the agency is constrained by statute and will not require states to exempt AI/ANs from work requirements to access Medicaid within their 1115 demonstrations; and
- WHEREAS,** the letter also conveyed concern that “requiring states to exempt AI/ANs could raise civil rights concerns” implying a critical misinterpretation that federal accommodations for AI/ANs are unconstitutional; and
- WHEREAS,** dis-incentivizing Medicaid enrollment by imposing work requirements is a de facto cut to the underfunded Indian Health System. Rather than incentivizing work or personal responsibility, work requirements discourage AI/ANs from enrolling in Medicaid, causing them to fall back on the chronically-underfunded IHS for care, as well as limiting critical third-party collections for the Indian Health System; and
- WHEREAS,** the United States Constitution recognizes that AI/ANs have a unique political status within the federal government that is not based on race and, in fact, obligates the federal government with a trust and legal responsibility to ensure the highest possible health status for Tribal Nations; and
- WHEREAS,** Congress has authorized appropriations and enacted numerous Indian-specific laws to fulfill this trust responsibility, as well as enacted numerous Indian-specific provisions in law to accommodate the unique characteristics of the healthcare needs of AI/ANs within the Indian Health System; and
- WHEREAS,** CMS has historically approved a number of Indian-specific provisions and special terms and conditions (STCs) in Section 1115 demonstration waivers as needed to accommodate the unique status of AI/AN Medicaid enrollees and maintain continued access to Medicaid resources by the Indian Health System; and
- WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),

Because there is Strength in Unity

whose provisions and principles support and promote the purposes of this resolution; therefore, be it

RESOLVED the USET SPF Board of Directors stands opposed to Medicaid work requirements and other barriers to healthcare access, as they are counter to the execution of the federal trust responsibility to provide American Indians and Alaska Natives the healthcare to which they are entitled; and, be it further

RESOLVED the USET SPF Board of Directors urges the Centers for Medicare and Medicaid Services to work collectively through the Tribal Consultation process with the state Medicaid programs to address Tribal concerns before waivers are allowed to proceed; and, be it finally

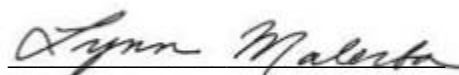
RESOLVED the USET SPF Board of Directors urges the Centers for Medicare and Medicaid Services to immediately retract the January 11, 2018 State Medicaid Director letter and the January 17, 2018 "Dear Tribal Leader" letter, and issue new guidance that reflects the unique status of American Indians and Alaska Natives as political sovereign entities from which there is existing legal precedence, and affirms the government-to-government and political relationship between the federal government and Tribal Nations.

CERTIFICATION

This resolution was duly passed at the USET SPF Impact Week Meeting, at which a quorum was present, in Arlington, VA, February 8, 2018.



Chief Kirk E. Francis, Sr., President
United South and Eastern Tribes
Sovereignty Protection Fund



Chief Lynn Malerba, Secretary
United South and Eastern Tribes
Sovereignty Protection Fund